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Collections & Support

OVER $51,500 IN RESTITUTION PAYMENTS FOR VICTIMS COLLECTED IN MARCH

In March 2003, the collections unit completed entering all of the 2003 Permanent Fund Dividend attachments. The unit successfully garnished a total of $2,663,235.43 from the 2002 PFD as of this month. In addition, the unit opened 61 criminal and 22 juvenile restitution cases for collection. Initial notices were sent to 197 restitution recipients. Forty-seven restitution judgments were paid in full, and satisfactions of judgment were filed in these cases. Our office received payments totaling $13,415.14 toward criminal restitution judgments and payments totaling $38,112.18 toward juvenile restitution judgments this month. We requested 204 disbursement checks, and issued 261 checks to recipients.

CHILD SUPPORT OBLIGOR FORCED TO FILE FOR PFD

AAG Pamela Hartnell was successful in obtaining an obligor's compliance with an order to apply for his 2002 Permanent Fund Dividend for payment of child support. The

obligor, Mr. Hildebrand, is under a court order to file for his PFD every year as long as he has child support arrears. Ms. Hartnell filed an application for an order to show cause because he did not file for his 2002 PFD. After three court hearings, Mr. Hildebrand filed for his PFD on March 24, 2003. Superior Court Judge Wood advised Mr. Hildebrand that the state should not have to file motions to force him to do what the court ordered. Judge Wood explained that if CSED had to file to compel him to apply for his PFD in the future, he would be assessed attorney fees.

FOURTH ATTEMPT TO FREE DEFERRED SAVINGS PLAN FOR CHILD SUPPORT SUCCESSFUL

After six years and three previous attorneys' unsuccessful attempts, AAG Kevin Williams obtained a Qualified Domestic Relations Order (QDRO) in the William Abbott case. This should allow the custodial parent to recoup $20,000 in child support arrears. This case was unusual. Several years earlier, a QDRO was used to transfer a portion of the custodial parent's deferred savings plan to the child support obligor as part of the parties' property settlement. Pursuant to the QDRO, the plan administrator placed the obligor's lump sum share of that account into a separate segregated account.

The obligor subsequently failed to pay child support and accrued a significant arrearage. The custodial parent asked CSED to attach the obligor's portion of the deferred savings account to pay the arrears. However, because a segregated account had been created for the obligor, attempts to undo or amend the original QDRO failed, even when the superior court ordered that the original QDRO was null and void. In other words, once the account was segregated, the plan administrators would not undo that account.

After consulting with the custodial parent and various plan administrators, Mr. Williams obtained sufficient information to complete a QDRO that was specific enough to work. The new QDRO specifically requires the plan administrator to withhold amounts from the obligor's segregated account for payment of support owed to the custodial parent. Since it was a deferred savings account, and the custodial parent has now reached retirement age, the custodial parent should receive the funds from the plan for payment of the support arrears as soon as the QDRO is processed.

Environmental

D-PAD SPILL SETTLEMENT REACHED

BP Exploration (Alaska) Inc. (BP) and the state reached agreement on March 18 regarding the supplemental environmental project component of the penalty for the "D-Pad Spill." BP has promised to commit $300,000 to fund three projects: (1) a study of rural air quality issues relating to diesel generators; (2) the outfitting of approximately 80 Anchorage School District buses with oxidative catalysts that will greatly reduce their emissions, and (3) the North Slope component of a University of Alaska Environmental and Natural Resource Leadership Initiative.

The D-Pad Spill settlement, reached in principle in November of 2002, called for a total cash and non-cash civil penalty of $675,000, the largest such fine for an Alaska oil spill since the Exxon Valdez. It related to a release of between 10,000 and 60,000 gallons of crude oil from a North Slope gathering line following a long series of operational lapses. After the spill, BP disposed of some of the recovered liquids against state instructions, an action that increased the company's liability. AAG Chris Kennedy represented DEC in the D-Pad investigation and settlement negotiations.

Fair Business Practices

RCA OBTAINS FAVORABLE DECISION IN NINTH CIRCUIT SOVEREIGN IMMUNITY APPEAL

The RCA received a favorable decision from the Ninth Circuit on March 12, 2003, in an appeal filed by the commission. The appeal was based on an Eleventh Amendment Sovereign Immunity motion to dismiss that was denied by the federal district court. An immediate appeal was taken to the Ninth Circuit under the collateral order doctrine.

The underlying action in federal district court was filed by ACS, challenging an order issued by the RCA in its implementation of the Telecommunications Act of 1996. Under the Act, state commissions like the RCA are required to implement competition in local telecommunications markets. They do so by reviewing for consistency with federal law interconnection agreements reached via negotiation or arbitration between incumbent telecommunications carriers, like ACS, and competitors, GCI in this case. The Act also provides for exclusive federal court review of such state commission decisions.

After being named as a defendant in federal court, the RCA filed its motion to dismiss. At the time it did so, the circuits were split as to whether state commissions were immune from suit in federal court under the Eleventh Amendment, notwithstanding an act of Congress to the contrary. After briefing to the Ninth Circuit was complete, the U.S. Supreme Court issued its decision in *Verizon v. Public Service Commission of Maryland*, 122 S.Ct. 1753 (2002). In *Verizon*, the Supreme Court held that federal district court challenges to state commission decisions under the Act could be maintained against state commissioners under the *Ex Parte* Young doctrine. This doctrine is a limited exception to state sovereign immunity, which allows federal court challenges against state officials to proceed where ongoing violations of federal law are alleged, and the relief requested is only prospective, declaratory, and/or injunctive. The Supreme Court left unanswered the question whether state commissions themselves retain their sovereign immunity under these circumstances.

Given the Supreme Court's ruling in *Verizon*, the RCA offered to allow a substitution of defendants - the RCA commissioners for the RCA - as a means of avoiding the necessity of having the Ninth Circuit address the constitutional question left unanswered by the Supreme Court. ACS refused the offer. During oral argument, the RCA let it be known to the court that this was a way to avoid the constitutional issue, and that the RCA commissioners had previously agreed to such a substitution.

The Ninth Circuit's decision adopted the RCA's recommended dispostion of the appeal over ACS' objection. By doing so, the RCA was able to avoid the potential of an adverse sovereign immunity decision by the court, which could have compelled the state commission to appear in federal court as a defendant. AAG DeVries represented the RCA in this case.

DISCIPLINARY HEARING CONCLUDES AGAINST KODIAK MIDWIFE

On March 13-14, 2003, the continued disciplinary hearing against a Kodiak midwife concluded. The hearing began in Kodiak on December 17, 2002, but was continued due to the midwife's sudden illness. The hearing involved the alleged breach of a Memorandum of Agreement (MOA) the midwife entered into with the Board of Certified Direct-Entry Midwives in 2001. As part of the MOA, the midwife agreed that her license would be suspended until she met certain continuing education requirements. On May 21, 2002, the Division of Occupational Licensing invoked the automatic suspension provision of the MOA because an investigation revealed that

she practiced as a midwife during the period of her voluntary suspension. The hearing officer has yet to render a proposed decision in the matter. AAG Robert Auth represented the division at the hearing.

DISCIPLINARY HEARING BEGINS AGAINST PHYSICIAN ASSISTANT

On March 25-26, 2003, a disciplinary hearing began in Anchorage against a physician assistant (PA) based on his consumption of alcohol prior to treating two separate patients on St. Paul Island in April 2000.

The hearing was originally scheduled for October 16, 2002, but the hearing officer granted the PA's motion for continuance because the PA claimed he was still recovering from back surgery and hadn't been able to hire an attorney. At the beginning of the March hearing, the PA sought a second continuance for the same reasons.

Following the conclusion of the Division of Occupational Licensing's case, the hearing officer granted the motion and continued the hearing until May 28, 2003. The PA immediately filed a motion to dismiss, based on the contention that as a recovering alcoholic, he is protected by the Americans with Disabilities Act. The hearing officer has yet to rule on the motion.

AAG Robert Auth is representing the division in this proceeding.

STATE REACHES AGREEMENT WITH PAYLESS CAR RENTAL

Attorney General Renkes approved a settlement with Payless Car Rental that ends a two-year investigation and lawsuit about the way Payless charges customers for damage repairs. The state's complaint alleged that Payless overcharged customers for repairs made to damaged rental vehicles without disclosing that these charges were significantly marked-up. Since most of Payless' customers are from outside Alaska, and the majority simply submitted claims to insurance companies, this practice was undetected for several years.

The settlement requires Payless to stop charging customers more than its actual repair cost, and to pay the state $100,000 over a two-year period. Out of this $100,000, the state will pay restitution to consumers who suffered out-of-pocket losses for inflated repair charges. The balance of the money will be used for consumer protection, education, and enforcement.

Human Services

SUPREME COURT EXPANDS ABILITY OF COURTS TO LOOK TO THE PAST IN TERMINATING PARENTAL RIGHTS

The Alaska Supreme Court granted the state's motion to publish its memorandum opinion and judgment (MOJ) in *Erica A. v. State*, DFYS, 66 P.3d 1 (Alaska 2003). In the decision, the court stated that when deciding whether to terminate a parent's parental rights, a superior court may look to the "entire history" of efforts offered by the department to the parent, and the parent's response to those efforts, rather than confining its review to just the efforts made in connection with the child at issue.

In this case, the department had made lengthy but unsuccessful efforts toward a mother in connection with her two older children who had later been lost to the mother through a custody dispute. The department was moving to terminate as to two later-born children. The department had made reunification efforts for the mother for the bulk of the older child's life, but had pretty much exhausted its options by the time the two-year-old was born.

The court held that "the state's efforts to prevent breakup of the entire family may be considered in assessing whether that effort

was sufficient with respect to a particular child." The court made a similar, though less expansive pronouncement regarding the state's efforts in ICWA cases in *E.A. v. State*, *DFYS,* 46 P.3d 986 (Alaska 2001), but *Erica A.* is the first case decided under state law to move in this direction.

Also of interest in this case was the superior court's retroactive extension of the state's custody over a child. During the trial, the state's custody of one of the children expired, whereupon the mother purported to assign her rights and responsibilities over the child to her own mother, claiming that the superior court was thus without jurisdiction to continue the trial. The superior court rebuffed this ploy by retroactively extending the state's custody, an action that the supreme court approved. AAG Kelly Gibson handled the trial and AAG Mike Hotchkin did the appeal.

Legislation/Regulations

MARCH IS A BUSY LEGISLATION DRAFTING MONTH

The Legislation and Regulations section edited many draft bills to match with the governor's budget bill. The drafting effort required considerable team work from everyone in the Department of Law to meet the expedited deadlines. Our thanks to everyone assigned to the effort for a job well done.

The section also completed revisions of important regulations projects for the Board of Fisheries, Regulatory Commission of Alaska, Alaska Oil and Gas Conservation Commission, and several occupational licensing boards.

The section edited bill reviews of pending legislation within the timelines set by the Office of the Governor.

Natural Resources

SUPREME COURT RENDERS THIRD OPINION IN NONRESIDENT FEES CASE

On March 14, the Alaska Supreme Court issued its third opinion in *Carlson v. CFEC*, a nineteen-year-old class action. The suit challenges annual permit and license fees charged to nonresident commercial fishers. For the most part, the state has charged nonresident fees that are three times higher than resident fees.

The supreme court reviewed decisions by Judge Michalski in two areas: (1) decisions implementing a formula announced by the supreme court in its last ruling in this case, and (2) decisions about how fee refunds will be made to class members, if it is finally determined that they are due refunds.

In its latest decision, the supreme court affirmed nearly all of the superior court's rulings. Those include a ruling, favorable to the state, that the fee differentials should be measured by the Privileges and Immunities Clause, not by the Commerce Clause. The court also affirmed, however, that if fee refunds are eventually due to nonresidents, they must be paid to all class members and must include prejudgment interest.

The court reversed and remanded two superior court rulings that had prevented the state from counting certain types of commercial fishery costs in the fee formula. Adding those costs will increase the differential that the state may charge nonresidents. It will reduce any refunds that would be due for past years, and it will allow higher nonresident fees in the future.

On remand, the superior court will consider whether the state's fees are ultimately

unconstitutional and, if so, what should be done with refunds that would be due to class members who cannot be found. AAG Steve White is representing the state in this litigation.

BOARD OF GAME MEETING COVERAGE

Kevin Saxby attended the annual spring Board of Game meeting in Anchorage. Five of seven members were new appointees, although several had prior board experience. Almost two hundred regulatory proposals and related topics were addressed, ranging from predator control to wildlife viewing areas. About 50 pages of regulatory changes were adopted, and are now in the final review stage.

BOARD OF FISHERIES MEETING COVERAGE

AAG Lance Nelson and AAG Jon Goltz participated in the board's nine-day March 2003, meeting on statewide fishery issues. Double coverage worked well because we were able to participate in simultaneous committee meetings. We gave legal advice on everything from shrimp to king salmon.

SUMMARY JUDGMENT MOTIONS IN KASILOF RIVER SALMON MANAGEMENT PLAN LAWSUIT

The Department of Law is defending the Department of Fish and Game in a suit brought by Kenai Peninsula Fisherman's Association and United Cook Inlet Drift Association. The plaintiffs challenge the Kasilof River Salmon Management Plan adopted by the Board of Fisheries in 2002. They contend the management plan impermissibly restricts the emergency order authority of the commissioner of the Department of Fish and Game. They also contend the Board of Fisheries failed to estimate a reduction in yield under the management plan, and thereby failed to comply with the regulation governing the adoption of optimal escapement goals in salmon fisheries.

Last summer, the superior court in Kenai denied the plaintiffs' request for a temporary restraining order. The issues have now been fully briefed on cross-motions for summary judgment. AAG Lance Nelson is handling this case.

JUNEAU ATTORNEYS MOVE ON

At the beginning of March, two attorneys in the Juneau Natural Resources section left for other employment. Sara Trent, who had been representing ADEC, moved to Anchorage to work for the Army Corps of Engineers. She will be mainly working on employment law matters. Kirsten Swanson, who had advised the coastal management program, left for several weeks in New Zealand. When she returns to Juneau, Kirsten will likely "hang out a shingle" and share expenses with several other solo practitioners.

Oil, Gas, & Mining

A FAST PACED MONTH FOR THE JUNEAU OIL, GAS, & MINING SECTION

The Juneau Oil, Gas, and Mining section was busy in March providing support to the administration on a variety of bills, and testifying before legislative committees. Additionally, AAG Philip Reeves and AAG Virginia Ragle assisted the Department of Natural Resources in researching and evaluating methods of pricing the state's royalty oil for potential future royalty-in-kind contracts. AAG Tina Kobayashi worked on discovery related to the state's protest of the Northstar pipeline tariffs. AAG Jan Levy represented the state before the Regulatory Commission of Alaska urging that the interest rate that applies to refunds be the rate set in AS 45.45.010. The commission recently ruled in the state's favor. AAG Lisa Kirsch provided advice to agencies and to new and former

employees regarding the requirements of the Executive Branch Ethics Act.

Special Litigation

ANCHORAGE JUDGE DISMISSES ACTION FOR FAILURE TO COMPLY WITH DISCOVERY ORDERS

In a civil case for damages against Alaska Psychiatric Institute (API), Plaintiff alleged medical malpractice in her treatment and evaluation, as well as defamation when a care provider was subpoenaed and testified in a court proceeding about her hospitalization. After Plaintiff failed to appear for two court-ordered independent medical examinations, Judge Volland granted API's motion to dismiss as a sanction for failure to cooperate in the discovery process. AAG Robert Doehl represented API and its psychiatrist.

Transportation

STATE PREVAILS IN ADMINISTRATIVE APPEAL OF BID PROTEST

The state prevailed in an administrative appeal of the decision of the commissioner of the Department of Transportation and Public Facility's denial of Peratrovich, Nottingham & Drage, Inc. (PN&D) bid protest. Judge Rindner concluded that there was a rational basis for DOT's decision, and that the court could not substitute its judgment for DOT.

PN&D had made a proposal for the design of a bridge at Buckland. Under regulations concerning the evaluation of architectural and engineering proposals, a three-member panel of engineers was appointed by DOT to evaluate and score the proposals based on a set of criteria defined in the Request for Proposals. When the numbers were added up, PN&D did not win, having placed third in the scoring. PN&D cried foul. But PN&D was able to elicit no support for its position from either DOT or the court.

After Judge Rindner's decision was rendered, PN&D agreed to a settlement whereby it waived its right to further appeal in exchange for the state dropping its claim for attorney's fees. AAG John Athens is handling this appeal.

STATE PREVAILS ON VALUE OF PARKING IN CONDEMNATION TRIAL

DOT&PF prevailed in a condemnation case after an eight-day jury trial in Fairbanks. The state condemned a strip of land and associated utility easements to widen the Old Steese Highway. There was little disagreement between the state and the owners as to the value of the land taken, and that issue was resolved by settlement on the second day of trial. However, the taking resulted in a reduction of parking at one of the properties, a strip shopping center. The owners contended the loss of parking reduced the value of the shopping center by as much as $591,346, while the state believed the loss of parking had little or no effect on the value of the shopping center. The jury unanimously agreed with the state, and rendered a $0 verdict. AAG Tom Dillon represented DOT&PF.

Criminal Division

ANCHORAGE

Anthony Robinson, a teacher assistant at Romig Middle School, was arrested and charged with two counts of third-degree sexual abuse of a minor. Robinson was a volunteer basketball coach for the girl's team at West High School. The charges are the result of a

sexual relationship with a 16-year-old student who was a member of the team.

Michael Arthur Stephan pleaded no contest to first-degree sexual assault and third-degree assault for a brutal assault and rape of a UAA student that occurred on campus. Stephan had grabbed the student as she was walking across campus in the early morning on her way to class. He dragged her into the bushes where he choked her into unconsciousness, raped her, and left. He was identified through the DNA database. He had a prior 1997 assault conviction that required him to provide a sample to the database. In an agreement with the state, he was sentenced to 30 years with five years suspended.

Alphonso Brooks was charged with attempted murder and multiple counts of assault in the third degree. Brooks is accused of approaching his ex-girlfriend and her new boyfriend, William Gaines, in the parking lot of a local bar and shooting the boyfriend multiple times. Brooks left the scene, but returned with his weapon drawn while police and medical help attended to the victim, and would not drop the weapon. As a result, he was shot by officers and was severely wounded. The boyfriend also survived, but is paralyzed from the waist down. Brooks is being held on $500,000 bail.

Louie Crandall had pled no contest to manslaughter for the drowning death of Gabe Jost in 1998. At his sentencing on March 20, 2003, he asked that the judge sentence him to less than the presumptive five years. Crandall believed Jost had molested his daughter and claimed that the drowning was an accident which occurred when he was attempting a "citizen's arrest" of Jost who he claimed tried to get away. The judge rejected the argument and imposed the presumptive sentence.

Kise Afoula was sentenced to eight years in jail for first-degree robbery. Afoula was 17 years old when he approached an elderly man practicing golf shots on the soccer field at West High. Afoula grabbed one of the man's golf clubs and hit him with it while saying, "I hate Japanese and I will kill you". Afoula's 15-year-old girlfriend assisted by going through the victim's pockets. They took the victim's car, leaving the victim suffering a broken collarbone and bleeding profusely. The judge found that the attack constituted a "hate crime". Due to the seriousness of the attack and injuries, Afoula, who had no prior criminal history, received one more than the presumptive sentence.

Justin Beavers was charged with second-degree murder in the death of Charles Hunley. The men were inside a trailer drinking with two others when Beavers began to beat Hunley, then put him in a headlock, choking him. One of the other men called 911. Hunley was transported to the hospital where he was pronounced dead.

BARROW

Washington resident James Gearhard was fined a total of $7,500 for the illegal taking of a Dall Sheep. Gearhard killed the animal without obtaining a non-resident tag or the services of a licensed guide.

Arnold Ahgook, a deaf and mute man, was sentenced to twelve years with seven years suspended for three counts of third degree assault and one count of third degree criminal mischief. Ahgook had fired a rifle bullet into a parked patrol vehicle while two officers and another person were standing beside it. Although the jury acquitted on attempted murder, the judge found that he had tried to kill one of the officers. Evidence at trial was that the bullet struck the vehicle door only a fraction of a second after the officer had stepped away from that very spot. At sentencing the defendant, through his sign language interpreter, asserted that he was only trying to shoot the vehicle because he was offended that the police had something so flashy and new in his village. The vehicle had been in the village for over two years before the shooting.

Ronald Ahvakana was again sentenced to the maximum ten years for criminally negligent homicide. The Alaska Court of Appeals had remanded the case for more findings to determine if the sentence was justified. The 1999 homicide stemmed from an incident in which Ahvakana caused severe internal injuries to his unconscious sexual partner, who bled to death. Ahvakana is appealing his sentence again.

BETHEL

Gregg Olson conducted three days of training for the VPSO academy in Sitka, and two hours of training on the laws relating to sexual assault at the SART training in Bethel. ADAs Dennis Cummings and Mike Walsh and Paralegal Vicki Matthews attended five days of SART training conducted here in Bethel.

There were three jury trials, with mixed results. Wassillie Sakar was found not guilty of fourth degree assault after a jury trail. A woman was found not guilty of fourth degree assault and interfering with a DV report. Another woman was found not guilty of second degree criminal trespass. A man was found not guilty of fourth degree assault.

In grand jury action, four men were indicted for sexual abuse of a minor, and another for sexual assault. Two men were indicted for felony assault, one for felony furnishing liquor, one for felony drugs, and one for burglary and theft.

FAIRBANKS

Takory Stern was indicted for attempted murder and assault in connection with a September 2002, shooting. Stern disappeared from Fairbanks, and in February he was caught trying to sell a stolen vehicle during an undercover sting operation in Arizona. The undercover officers told Stern they thought he was a DEA plant, but he assured them he was a drug dealer from Alaska with "connections". In an effort to bolster his position, he bragged that he had assaulted a person with a knife in Washington, stabbed a person in Fairbanks, and shot a man in 2002. Phoenix Police believed him when they found warrants from Washington for the assault and Alaska for attempted murder. Stern waived extradition to Alaska.

Ralph Wells was convicted of felony assault for head injuries to the eight-month-old baby of his girlfriend. The defense was that the child (who could barely crawl) stacked toys and blankets in its crib and then apparently fell (or jumped) from the crib. Evidence showed that the defendant had previously rolled the infant down several stairs "to teach it not to go on stairs." The jury did not convict on two additional counts of breaking both ankles and one arm, since those injuries were not discovered until after they had healed, and it was difficult to determine when they occurred. Wells is subject to presumptive sentencing.

Terry Somerlot plead to a consolidated charge of felony assault for throwing butcher knives at his live-in girlfriend and for chasing her six-year-old son into a bedroom with a knife, so that he "would not see me kill your mommy". The victim had left the state with the child and was refusing to return for trial.

A UAF journalism professor published the results of an investigation he supervised with students, alleging juror misconduct in the 1999 trials of two defendants convicted of murdering a fifteen-year-old boy in Fairbanks. Two other defendants were tried separately, and their convictions are not challenged in this latest effort to overturn the four murder verdicts.

With the commencement of hostilities in Iraq, we noticed more than a few folks arrested for offenses ranging from DUI to assaults to theft claiming "we-are-at-war-stress" as the basis for their particular offense. Since all of these cases plead out at arraignments, we don't know how the defense would have played to juries.

KENAI

The Kenai office recently received a case for grand jury from the AST cold case unit, involving a woman killed in 1985. The case had been dormant for some time, but when fingerprints found at the scene were once again run for comparison, it was discovered that there was now a match on record. It turned out the defendant had applied for (and gotten) a job driving a school bus years after the prints had been run initially. The defendant had been living in the lower 48 and driving a truck for the last few years. He waived extradition and was arraigned in Kenai.

Five individuals were indicted for a burglary that literally cleaned out a Kenai couple's home while on vacation. Everything was stolen, including china, bed sheets, cosmetics, and major appliances, and the couple's pickup taken and destroyed. The burglars also caused major structural damage when they flooded the house in their attempts to steal the refrigerator and severed the waterline to the icemaker.

A Kenai man was indicted for pointing a gun at his wife, waving it at three police officers, and shooting a round off less than five feet from the officers.

John Tanner was convicted of a domestic violence assault following a jury trial in Seward. After hearing the 911 tape and officer's observations of injuries, the jury convicted Tanner despite the victim testifying that she had not been assaulted by Tanner and that she only called the police to get Tanner in trouble because he would not argue with her.

As the bumper sticker in Homer says, "A quaint little drinking town with a big fishing problem." To illustrate at least half of that adage, one defendant was arrested twice in the same day for DUI-drugs. The first time she was stopped for erratic driving, but after being arrested, incarcerated, and released on bail, she was involved in an accident. She was so impaired that she thought she had been arrested four days earlier.

In a case demonstrating that family values are sometimes not all they're cracked up to be, a twenty-year-old was released on a felony DUI to his father as third-party custodian. The father made the mistake of falling asleep while in the hospital waiting room and the son stole the father's car, with the help of his mother, along with the father's prescribed methadone. The son drove the father's car and the mother drove hers, resulting in both of them being arrested for DUI. He is on his second pending felony.

KETCHIKAN

Chris Antonsen was found guilty at trial of assault in the fourth-degree for assaulting his wife. She recanted and said that he had not assaulted her and her injuries were accidental when she fell. However, her son testified that Antonsen assaulted her. This was the second time in one year that Antonsen was convicted of assaulting his wife, and in both cases, the victim recanted.

William Marshall was indicted for attempted murder apparently arising out of a dispute over tobacco. Marshall got a rifle from his vehicle and walked up to the victim who was standing talking with another person near a dock in the middle of the day. He then pointed the rifle and pulled the trigger twice. For an unknown reason, the rifle did not go off even though it was loaded. Marshall and the victim then started to fight, and the police were called. When asked if he was injured, Marshall stated that only his feelings were hurt because the rifle did not fire. When the police officer told Marshall that he did not know what charges were going to be filed against him, Marshall said that the appropriate charge was attempted murder. He also said that George Bush was dealing with his terrorists, and he (Marshall) was dealing with his.

KODIAK

A thirty-three-year-old Anchorage woman was indicted for felony promoting contraband after secreting her meal spoon, breaking it in half, and then fashioned the handle into a "shiv" while incarcerated at the Kodiak jail facility. A May trial date is pending.

While being arrested on a warrant issued after his indictment for a felony drug charge, a sixty-two-year-old Kodiak man was found to possess a backpack reeking of marijuana. After receiving a search warrant to seize and search the backpack, the police found ten ounces of marijuana already bagged for sale. The man was then indicted for another charge of misconduct involving a controlled substance in the fourth degree.

KOTZEBUE

A Kotzebue man was arrested in Selawik by local police on numerous charges including DUI, vehicle theft, criminal mischief, and second and fourth degree assault. Selawik Police were called to a local residence regarding a domestic disturbance and removed the defendant from the home. While police stayed in the home to investigate further, the defendant stole the police officer's snow machine, drove away, and shortly after, crashed the machine. Investigation revealed the defendant was intoxicated and had assaulted several people in the home, breaking the arm of one of the victims.

Another Kotzebue man was arrested by the Kotzebue Police following an incident where he was kicked out of another person's home due to his intoxication. Soon after he began shooting a stolen .357 revolver at another residence. He was charged with third degree assault, second degree theft, and numerous misdemeanor charges.

A Kotzebue man was arrested in Kotzebue by Alaska State Troopers on charges of fourth degree MICS and contributing to the delinquency of a minor. Troopers and members of the Kotzebue Police Department were serving a search warrant on his residence when he ran from the residence carrying a bag. The bag had five sandwich bags containing 121 grams of marijuana. Also seized by police was $5,800 in cash, a digital scale, and gram-size bags. A seventeen-year-old juvenile was in the home at the time.

A Selawik man was charged with first degree arson after the home he was living in burned to the ground. Prior to the house fire, the VPSO heard him say on the CB radio that he was going to burn the house down. Five minutes later the house was on fire. The VPSO and other residents were able to keep the fire from spreading to other homes.

NOME

An Anchorage resident happened to get off a plane in Stebbins that a trooper was getting on. A number of suspicious factors led the trooper to contact the man and eventually discover almost 400 gram-size packets of marijuana inside the metal case of a DVD player the man was carrying. Each packet is marketed as a gram, but contained only about a half gram; they sell for $40 apiece in Stebbins. The defendant was indicted for a felony drug offense.

A woman was indicted on a sale of marijuana to a minor charge after a Nome police officer stopped a sixteen-year-old coming out of her residence and got all the evidence he needed from the minor.

An Elim man was indicted on a variety of offenses, including attempted murder, after an incident on the trail between White Mountain and Golovin. The VPSO from White Mountain had stopped a snow machine driven by the defendant for suspected DUI and importation of alcohol. As the VPSO approached on foot, the defendant attempted to run the VPSO down with his snow machine, running over the man's legs. The VPSO then chased the

machine down at speeds exceeding 90 mph. After trying to strangle the VPSO, the defendant was eventually subdued, tied up, and taken back to White Mountain in a sled. He fought with the VPSO in the plane all the way from White Mountain to Nome and kicked out a patrol car window in Nome.

A Gambell man was arrested on a domestic assault. When the DA's office noted that the complaint stated that the victim of the assault was the defendant's twelve-year-old girlfriend, the troopers were asked to investigate, and it has now blossomed into first-degree sexual abuse of a minor.

PALMER

A man was indicted on charges of first and second-degree murder for killing his mother, who died of her 80 stab wounds. In an interview with investigators, the man described how he repeatedly stabbed his mother with a knife. He also said he smoked marijuana earlier in the evening, used methanphetamine the day before, and that he was diagnosed as a schizophrenic a number of years ago. Trial is set for July.

The Palmer grand jury also indicted a man on three counts of first-degree and second-degree assault, after he admitted to state troopers that he threw a 9-month-old child into a crib from about four feet away. As a result, the child received multiple skull fractures and was treated at the Alaska Native Medical Center. The man had initially claimed the child fell out of the crib, but in a subsequent interview explained how he had a stressful day and lost control. A jury trial is scheduled for May.

Two men and a woman were indicted by the Palmer grand jury for a January homicide that resulted in counts of first-degree and second-degree murder, robbery, burglary, theft, and tampering with evidence. They had gone to the victim's to rob him of drugs. The woman defendant and another woman lured the victim into the shower. While he was occupied with one of the women, the other hit him on the head with a rock. A struggle ensued and the two men entered the fight, resulting in massive head injuries to the victim. The defendants remain in custody on $500,000 cash only bail.

Kelley DePaul was indicted on charges of first-degree robbery and three counts of third-degree assault for the July robbery of the Mat-Su Cinema. Though at first unsure of his intentions, the female ticket attendant was more sure when he pulled a loaded pistol from his pants waistband, racked it, and pointed it at her and another young man standing at the ticket window. With the cash register open, the man grabbed the cash, stuffed it into his backpack, and fled, pointing his pistol at a citizen witness who attempted to apprehend him. Police found a getaway four-wheeler, backpack, clothing, and loaded pistol used in the robbery. There is a warrant for DuPaul's arrest.

Caleb Bennett was indicted on five counts of criminal mischief in the third-degree for shooting seven reindeer at a local reindeer farm. There is a warrant out for Bennett's arrest.

William Peters of Wasilla was convicted of driving under the influence and reckless driving after a jury trial, despite the testimony of a defense witness who claimed to be the driver.

OSPA
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Briefs of Interest

Search and seizure - (investigative search) The state argues that an officer who came upon the defendant and another man smoking crack cocaine behind a building had reasonable suspicion to force open the defendant's hand to determine what, if

anything was inside. The facts supporting the officer's action were (1) the men were involved in felony-level drug activity, (2) in a high-crime area, (3) the officers' knowledge and experience that felony drug offenders often resorted to violence when confronted by the police, and (4) the fact that an unknown object in a suspect's clenched fist was objectively more threatening than an unknown object in his pocket. *Albers v. State*, No. A-7446.

Medical marijuana law - The defendant sought to avail himself of the affirmative defense available to medical marijuana users under AS 17.37.030 despite the fact that he did not meet the prerequisites for the defense. On appeal, the state argues that the legislature correctly exercised its constitutional authority to amend the medical marijuana law. The state also argues that the defendant was not entitled to enter a *Cooksey* plea because the legislature's amendment of the law was not dispositive of the issue of whether the defendant actually possessed the marijuana. *Niehaus v. State*, A-8385.

Statute and Rule Interpretations

Upholding constitutionality of Alaska's sex-offender registration act - The United States Supreme Court held that Alaska' s sex offender registration act did not impose punishment for purposes of the Ex Post Facto Clause, and therefore, that its retroactive application did not violate the federal constitution. This opinion reversed the Ninth Circuit's earlier opinion holding that the act was punitive. *Smith v. Doe*, ___ U.S. ___, 123 S.Ct. 1140, 71 U.S.L.W. 4125 (U.S., Mar 05, 2003) (NO. 01-729).

Sex-offender registration requirements - The Alaska Court of Appeals interpreted AS 11.56.840(a)(4), which criminalizes failure to register as a sex offender, and AS 12.63.010, which sets out the duty of registration, to require a sex offender to file sworn verification forms. *Dailey v. State*, Op. No. 1861 (Alaska App., March 14, 2003).

Presumptive term under AS 12.55.125(c)(2)(A) - The Alaska Court of Appeals held that proof beyond a reasonable doubt was required for the aggravating circumstances which, under AS 12.55.125(c)(2)(A), lead to the imposition of a seven-year rather than five-year presumptive term for a first felony offender convicted of a class A felony other than manslaughter. The state is pursuing a petition for hearing from this decision. *Tuttle v. State*, Op. No. 1859 (Alaska App., March 14, 2003).

First and second-degree custodial interference (AS 11.41.320(a), .330(a)) - The Alaska Court of Appeals held that an element of either first- or second-degree custodial interference is that the defendant intended to withhold the child for a protracted period during the time that he or she has the child, and that the defendant's reasons for taking the child are relevant to the this element. The state is pursuing a petition for hearing from this decision. *Perrin v. State*, Op. No. 1862 (Alaska App., March 21, 2003).